

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRI J. FOLK)	
Claimant)	
VS.)	
)	Docket No. 250,251
HEART OF AMERICA HOSPICE)	
Respondent)	
AND)	
)	
TIG PREMIER INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the January 22, 2001, post-award Order of Administrative Law Judge Bryce D. Benedict wherein claimant's attorney was awarded attorney fees in the amount of \$455 (this represents 4.55 hours at \$100 an hour) and respondent was assessed a penalty of \$25 for failing to timely pay valid, related and authorized medical bills. Oral argument before the Board was held on August 15, 2001.

APPEARANCES

Claimant appeared by her attorney, John M. Ostrowski of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Kevin J. Kruse of Overland Park, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board included the preliminary hearing transcript of January 12, 2000, with the attached exhibits, the penalty hearing transcript of January 17, 2001, with the attached exhibits, the settlement hearing transcript of August 7, 2000, with the attached exhibits, and the documents on file with the Director of Workers Compensation. The stipulations contained in the settlement hearing and in the various

transcripts above listed were also considered by the Appeals Board and adopted for the purposes of this decision.

ISSUES

Did the Administrative Law Judge err in ordering attorney fees to claimant's attorney in the amount of \$455 and a penalty of \$25 for respondent's failure to timely pay reasonable and necessary medical expenses after a demand under K.S.A. 44-512a (Furse 1993) had been properly made?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant originally suffered accidental injury on July 17, 1998, while employed with respondent. She requested medical treatment, but was instructed to go to her own doctor. Claimant then proceeded to St. Francis Family Medicine, where she was treated by Dennis D. Tietze, M.D. Dr. Tietze provided authorized treatment for a short period of time. Respondent contended in its brief to the Board that there was a question regarding the authorization of Dr. Tietze. However, at the preliminary hearing of January 12, 2000, when asked who the authorized treating physician was from July 1998 to January 1999, respondent's attorney advised it was Dr. Tietze in Topeka.

In January 2000, claimant provided to respondent a copy of a bill from St. Francis Physician's Clinic in the amount of \$135. This bill, however, listed the name of Dennis R. Folk, claimant's husband. In the January 10, 2000, transmittal letter, claimant's attorney advised that the bill was for claimant for treatment by Dr. Tietze. There was an explanation that Dr. Tietze had mistakenly billed claimant's insurance company instead of the workers compensation carrier and they were now submitting the bill for payment. No response was elicited from respondent at that time. The bill of \$135 was not paid.

There was a letter transmitted from claimant's attorney on August 2, 2000, stating that it is important that all valid medical be paid, as claimant was receiving bills clearly related to her workers compensation claim. Again, no response was elicited from respondent regarding the \$135 bill. The parties proceeded to settlement hearing on August 7, 2000, before Special Administrative Law Judge Clyde N. Christey. There was additional discussion about the payment of medical expenses at that time, but the particular bill in question was not discussed. The Special Administrative Law Judge did order payment of all "valid and authorized medical resulting from this injury date of July 14, '98, if incurred prior to today."

On October 20, 2000, claimant provided to respondent a demand letter pursuant to K.S.A. 44-512a (Furse 1993), requesting that the bill from Dr. Tietze in the amount of \$135 be paid. The October 20 letter specifically mentioned the St. Francis Physician's Clinic bill in the amount of \$135 and demanded payment within 20 days.

On November 16, 2000, respondent responded to claimant's demand with a request for information regarding the bill. Respondent initially requested information on who allegedly told claimant to seek treatment with her family physician. This question appears directly contrary to respondent's comment at the January 12, 2000, preliminary hearing, where it was acknowledged that the claimant was authorized to go to Dr. Tietze.

Additionally, respondent finally raised the issue regarding the fact that the bill contained the name of claimant's husband, rather than claimant. This billing error appears to have been explained on at least two separate occasions by claimant's attorney. The bill from Dr. Tietze remained unpaid.

On November 27, 2000, claimant scheduled the penalties hearing. On November 30, 2000, respondent forwarded a second letter, again requesting details regarding the authority by which claimant was referred to Dr. Tietze. On December 6, 2000, claimant replied, advising respondent of its source of authority by which Dr. Tietze was considered the authorized treating physician.

On January 11, 2001, the bill to Dr. Tietze was paid for the July 1998 services. This payment was issued six days prior to the January 17, 2001, penalty hearing.

Claimant argues respondent has not acted in good faith in delaying payment of this authorized medical bill. Respondent counters, alleging the bill submitted was not in detail sufficient to allow respondent to conclude whether it was for authorized treatment or not. The Board rejects respondent's argument, as multiple letters issued after the receipt of the original bill explained the fact that this bill did, in fact, stem from treatment provided to claimant by Dr. Tietze for the injury of July 17, 1998.

The Board is perplexed by respondent's apparent attempt to display Dr. Tietze as unauthorized. This is directly contrary to the on-record statement made by respondent's attorney at the January 12, 2000, hearing. Additionally, the record is void of any indication that respondent ever stated that Dr. Tietze was no longer authorized. It is acknowledged that claimant was referred to another physician for treatment, but there was never a dispute regarding the authorization of Dr. Tietze to initially provide treatment.

K.S.A. 44-512a (Furse 1993) requires, when there is a dispute regarding a medical bill, that a service of the demand for payment, setting forth with particularity the items claimed to be unpaid and past due, be presented by registered mail or delivered in person to the employer or insurance carrier. If payment is not made within 20 days from the date

of such service, a penalty of \$25 or 10 percent of the amount which is past due, whichever is greater, shall be assessed.

The Appeals Board finds that the demand by claimant issued October 20, 2000, sets forth with particularity the claim being made. Additionally, several explanatory letters had been provided to respondent prior to October 20, requesting payment of the bill. Payment was not made within 20 days. In fact, the response letter by respondent dated November 16, 2000, was beyond the 20-day limit. At that time, respondent merely requested additional information, rather than issuing payment.

The Appeals Board, therefore, finds that respondent is in violation of K.S.A. 44-512a (Furse 1993) in that the payment of the authorized medical bill from Dr. Tietze was not made within 20 days of the date of service of the demand and the assessment of a penalty of \$25 is, therefore, affirmed.

K.S.A. 1998 Supp. 44-536 allows for an assessment of attorney fees against the respondent any time an attorney renders services to an employee subsequent to the ultimate disposition of the initial and original claim. The Appeals Board finds, pursuant to K.S.A. 1998 Supp. 44-536, attorney fees for this post-award dispute are appropriate and affirms the award of attorney fees in the amount of \$455 for the services rendered before the Administrative Law Judge. Additionally, claimant's attorney has filed an affidavit before the Board, requesting an additional 3 hours of service at \$125 per hour representing the time required to brief and argue the matter before the Board. The Appeals Board finds claimant's attorney is due an additional \$300 representing 3 hours at \$100 per hour for the time spent before the Board pursuant to K.S.A. 1998 Supp. 44-536. No explanation was provided as to why a higher hourly fee would be appropriate before the Board. Claimant's attorney is, therefore, awarded the same hourly fee as was claimed and awarded before the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict, dated January 22, 2001, should be, and is hereby, affirmed, and that penalties are assessed against the respondent and its insurance carrier in the amount of \$25 for failure to timely pay medical expenses pursuant to claimant's demand. Additionally, attorney fees in the amount of \$455, representing the time spent by claimant's attorney before the Administrative Law Judge, and an additional \$300, representing the time spent by claimant's attorney before the Board, are assessed against the respondent and its insurance carrier.

IT IS SO ORDERED.

Dated this ____ day of September, 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
Kevin J. Kruse, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director